



Case Reference: EA-2023-0162  
NCN: [2023] UKFTT 631 (GRC)

First-tier Tribunal  
General Regulatory Chamber  
Information Rights

Before

TRIBUNAL JUDGE BUCKLEY

Between

GARY SYMONDS

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

JUDGE BUCKLEY

Sitting in Chambers  
on 25 JULY 2023

DECISION

1. The appeal is struck out.

REASONS

*Application and response*

2. The Commissioner applies for the appeal to be struck out under rule 8(2)(a) (no jurisdiction) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.
3. The Commissioner submits that the grounds of appeal allege a breach of section 77 of the Freedom of Information Act 2000 (FOIA) which does not fall within the remit of section 50 FOIA. It was therefore not addressed in the decision notice and falls outside the tribunal's jurisdiction under section 57 FOIA.
4. The appellant's response to the strike out application concludes by stating the following:

"I therefore request the Tribunal to uphold my appeal and require the ICO, having now undertaken a Section 77 investigation, to document that investigation in a revised decision notice together with full results of the CRIT investigation process leading to their decision that there was no unlawful concealment. This should indicate if the ICO followed the steps as presented in complaint my documents and if they did or did not find information concealed, further if they did find information concealed or otherwise not visible but present whether it was found the concealment was accidental or otherwise to support it was or was not unlawful concealment as part of the Section 77 investigation process."

5. The relevant part of the grounds of appeal state:

" There were two parts to my complaint of the 21 November 2022 (*to the Commissioner*):

...

Part 2 - raised concerns that one document supplied by the PA was formatted in a way that information I was entitled to was concealed.

...

The ICO did not consider part two of my concerns (information concealment), nor is there any mention of that concern being considered within the ICO decision notice.

I would like to appeal to the First Tier Tribunal regarding the failure of the ICO to properly investigate my information concealment concerns."

6. There is no appeal in relation to part 1 of the complaint.
7. Following the submission of the grounds of appeal, the Commissioner carried out a section 177 investigation and informed the appellant on 13 June 2023 that it had been decided that there was insufficient evidence to support the allegation and that no further action would be taken.

*Discussion and conclusions*

8. It is clear from the grounds of appeal and the outcome specified both in the grounds of appeal and in the appellant's response to the strike out application, that the appeal is a complaint that the Commissioner has failed properly to investigate his information concealment concerns under section 77.
9. This is outside the jurisdiction of the tribunal. It does not fall within the Commissioner's remit under section 50 FOIA, and accordingly is not within the remit of the first-tier tribunal. The tribunal does not have jurisdiction to deal with appeals in relation to section 77 FOIA, whether they are substantive complaints or complaints that the Commissioner has failed to investigate adequately or at all.
10. On that basis the appeal is struck out under rule 8(2)(a).

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 26 July 2023

Promulgated: 28 July 2023